Case referred to :—

(1) *R. v. Redd* 17 C.A.R. 36.

CRIMINAL APPEAL.

Lim Kean Siew for the appellant.

E. Brown (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Abbott, J. (delivering the judgment of the Court) : — The appellant in this case was convicted of murder by a jury in Penang, and was sentenced to death. It is not necessary to recount the evidence given in the lower Court, for only one matter calls for consideration. With a view to establishing the identity of the appellant during the course of police investigation, several photographs of various persons were shewn to the first prosecution witness Ang Ah Bah, who in cross-examination said :—

"I first identified accused when the Inspector had shown me some photographs".

In the course of his evidence-in-chief, the Police Inspector used the following words :—

"I showed him 4 or 5 photographs. They were photographs of known pick-pockets living in that area."

These two pieces of evidence must have left the jury with the impression that the appellant was a known pickpocket and a person of bad character. In our view, the learned trial judge should either have discharged the jury and commenced the trial afresh, or have warned them wholly to disregard that part of the evidence.

Identification was a vital issue in this case, and we have to ask ourselves whether the evidence so admitted affected the minds of the jury in arriving at their verdict. In *R. v. Redd*[1], Avory J., in the course of delivering the judgment of the Court, said (at p. 39) :—

"It has been frequently laid down that such a conviction can only be upheld if the jury would inevitably or must inevitably have come to the same conclusion."

As identification played an important part in the case, we find ourselves unable to say that, had this evidence been excluded the jury must inevitably have arrived at the same verdict. In the circumstances, we quash the conviction and sentence and order a re-trial.

Re-trial ordered.

Solicitor for the appellant: *Lim Cheng Ean.*

PUBLIC PROSECUTOR v. NG FAH.

[C. A. (Mathew, C.J., Wilson & Abbott, JJ.)
May 26, 1954]

[K. L. — Criminal Reference No. 5 of 1953]

Criminal Procedure Code (Cap. 6), s. 399(i) — Admissibility of report of Chief Chemist.

In this case the learned Magistrate had refused to admit as evidence the Report of the Chief Chemist holding that as the provisions of s. 399(i) of the Criminal Procedure Code had not been complied with, the report was inadmissible. The Chief Chemist was called to give evidence and as a result the accused was acquitted. The matter was referred to the Court of Appeal as a Reference under s. 34 of the Courts Ordinance.

Held: (1) the learned Magistrate was right in holding that the report of the Chief Chemist was inadmissible as the provisions of s. 399(i) of the Criminal Procedure Code was not complied with; (2) as apart from the Chemist's report there was no evidence to prove that the substance the subject matter of the charge was tin ore, the accused was rightly acquitted.

Case referred to :—

(1) *Ng Yee v. Public Prosecutor* (1953) M.L.J. 250.

CRIMINAL REFERENCE.

E. Brown (Federal Counsel) for the appellant.

Nancy Yeap for the respondent.

Mathew, C.J. (delivering the judgment of the Court) : — This case came before us as a Reference under section 34 of the Courts Ordinance, and was heard as an appeal from the decision of the learned magistrate.

The point on which our decision is required has already been decided in *Ng Yee v. Public Prosecutor*[1].

The learned magistrate refused to admit as evidence the Report of the Chief Chemist, holding that the provisions of section 399(i) of the Criminal Procedure Code not having been complied with, the Report was inadmissible.

No decisions on this point were cited to the learned magistrate. The prosecution then applied for an adjournment in order to call the Chief Chemist, which was granted. On the day appointed for the resumed hearing, the prosecution closed their case without calling further evidence. The prosecution thus acquiesced in the rejection of the Chemist's Report, and did not attempt to remedy their failure to prove that the substance the subject matter of the charge was tin-ore.

As the Deputy Public Prosecutor did not argue in support of the appeal against the decision of the magistrate to acquit, the appeal was dismissed.

Appeal dismissed.

Solicitors for the respondent: *Hogan, Adams & Allan.*